IN THE SUPREME COURT OF GUAM

LUIS DE VERA,
Plaintiff-Appellant,

v.

WEN YEN CHEN and MAGGIE MEI CHIA CHEN,
Defendants-Appellees.

Supreme Court Case No.: CVA05-002
Superior Court Case No.: CVA0255-92

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on May 11, 2005
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; ROBERT J. TORRES, JR., Associate Justice.

CARBULLIDO, C.J.:

[1] Plaintiff-Appellant Luis De Vera appeals from a Superior Court Judgment dismissing the case pursuant to Rule 41(b) of the Guam Rules of Civil Procedure for failure to prosecute. De Vera argues that the twenty-two month time period of inactivity does not warrant dismissal, there was no prejudice demonstrated as a result of the delay, and points out that public policy favors disposition of cases on their merits. In response, Respondent-Appellees Wen Yen Chen and Maggie Mei Chia Chen, ("Chens") contend that the trial court's holding was proper. The Chens submit that there was no reasonable excuse to justify the delay, that there is a presumption of prejudice to them by the delay, and that the court need not consider sanctions less drastic than dismissal.

[2] The Superior Court certified the Judgment appealed from in this case as final pursuant to Rule 54(b) of the Guam Rules of Civil Procedure. We hold, however, that the trial court erred in certifying the Judgment pursuant to Rule 54(b). We further hold that we do not have jurisdiction to hear this appeal, and accordingly, dismiss the appeal.

I.

[3] In May 1990, the parties executed a Land Purchase Agreement, whereby De Vera purported to sell Lot No. 5156-1, Dededo, Guam, to the Chens. The agreement required the Chens to pay $250,000.00 to De Vera up front, along with a promissory note for $43,000.00. The Chens properly executed this part of the agreement. However, when the promissory note was due to be paid a year later, the Chens refused to pay the $43,000.00.

[4] De Vera initiated court proceedings by filing a Complaint for Rescission on March 3, 1992. He also recorded a Notice of Lis Pendens on the same day. On April 4, 1994, he amended his

complaint. He requested the remaining balance of $43,000.00 together with pre- and post-judgment interest, and reasonable costs of collection, including attorney's fees and exemplary damages.

[5] The Chens filed an amended answer and counterclaim in July 1992 for fraud, claiming that they relied upon De Vera's intentional misrepresentations that the agreement was to convey clear and clean title to ±1,465 square meters of property. They assert that only 1,244 square meters of the actual land were conveyed. The Chens submit that De Vera was actually the broker and not the true owner of the land in question. The Chens also argue that the agreement was subject to the condition that the property should be cleared of tenants or occupants before the full payment of the contract price, and that this condition has still not been fulfilled. The Chens request that the court reduce the contract price to $200,000.00 or less, requiring De Vera to return $50,000.00 of the $250,000.00 the Chens have already paid. The Chens also ask for punitive damages and an award of costs and attorneys' fees.

[6] After various trial continuances, four judicial disqualifications, and three previous motions to dismiss for failure to prosecute pursuant to Rule 41(b), the Chens filed their fourth motion to dismiss pursuant to Rule 41(b).[1] The trial court granted the motion on April 6, 2004, thereby dismissing De Vera's claims, but did not address the Chens' counterclaims. The court directed the Chens to submit a Judgment of Dismissal with Prejudice and the Chens complied. The Judgment of Dismissal of plaintiff's claims was filed on April 28, 2004. In July 2004, De Vera voluntarily withdrew the Notice of Lis Pendens.

[1] Although the reasons for the numerous continuances and the disqualifications of four different trial judges are not before us for review, we take this opportunity to emphasize that careful management of dockets is important to the administration of justice. Moreover, although judges must be continually cognizant of the reasons for disqualification, particularly when his or her impartiality might reasonably be questioned, judges have an equally strong duty not to recuse when the circumstances do not require recusal. *See Laird v. Tatum,* 480 U.S. 824 (1972) (stating that "a judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified").

[7] In response to the trial court's dismissal, De Vera filed a motion to dismiss the counterclaim for failure to prosecute. Because each party would be submitting contradictory arguments, De Vera pursued Rule 54(b) certification of the partial judgment which dismissed his complaint. The trial judge granted certification on December 22, 2004. The court stated:

> The Court has determined that there is no just reason for delay in the entry of a final judgment as to plaintiff's complaint. The Court finds that the respective claims in the complaint and the counterclaim are sufficiently related that there is a possibility of prejudice to both parties as to evidentiary issues and other issues if the claim and counterclaim were to be tried separately. These considerations and considerations of judicial economy dictate that certification be granted, so that plaintiff's claim will either be finally and completely be disposed of prior to trial should the dismissal of the complaint be affirmed, or plaintiff's claim and counterclaim will be tried together if the dismissal of the complaint is reversed.

Appellant's ER, at 92-93 (Order Granting Certification Pursuant to GRCP 54(b), Dec. 22, 2004). The Chens have not appealed the 54(b) certification.

[8] On January 13, 2005, De Vera filed an appeal of the Rule 41(b) dismissal. On June 21, 2005, we ordered the parties to submit supplemental briefs on the issue of whether or not Rule 54(b) certification was proper.

II.

[9] This court has jurisdiction pursuant to Title 7 GCA § 3108(b) (2005), which provides that orders may be subject to immediate appellate review by the Supreme Court "where it determines that resolution of the questions of law on which the order is based will . . . [m]aterially advance the termination of the litigation or clarify further proceedings therein."

III.

[10] A trial court's order granting Rule 54(b) certification is reviewed for an abuse of discretion. *See Guam Hous. & Urban Renewal Auth. ("GHURA") v. Pac. Superior Enters.*, 2004 Guam 22 ¶ 19. Abuse of discretion is defined as a trial court decision "exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *People*

v. Tuncap, 1998 Guam 13 ¶ 12 (quoting *Int'l Jensen, Inc. v. Metrosound USA., Inc.*, 4 F.3d 819, 822 (9th Cir. 1993)). "The 'issuance of a 54(b) order is a fairly routine act that is reversed only in the rarest instances.'" *GHURA*, 2004 Guam 22 ¶ 19 (quoting *James v. Price Stern Sloan., Inc.*, 283 F.3d 1064, 1068 n.6 (9th Cir. 2002)). The proper role of the appellate court is "not to reweigh the equities or reassess the facts but to make sure that the conclusions derived from those weighings and assessments are juridically sound and supported by the record." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 10 (1980).

IV.

[11] In relevant part, Rule 54(b) states: "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay, and upon an express direction for the entry of judgment." Guam R. Civ. P. 54(b).

[12] Two inquiries must be made when determining whether Rule 54(b) certification is proper. First, the court must determine whether it is dealing with a "final judgment." *Curtiss-Wright*, 446 U.S. at 7 (quoting *Sears, Roebuck & Co., v. Mackey*, 351 U.S. 427 (1956)). Different tests have been developed to determine whether a judgment is final. Second, the court must perform a balancing test and consider whether the "costs and risks of multiple proceedings and the policy with respect to judicial efficiency are outweighed by the need for an 'early and separate judgment as to some claims or parties.'" *See GHURA*, 2004 Guam 22 ¶ 20. In doing so, the court should determine that there is no just reason for delay and give an express direction for the entry of judgment. *See id*. These inquiries are examined in detail below.

A. First Prong: Finality

[13] To satisfy the first prong of finality, the judgment "must be a 'judgment' in the sense that it is a decision upon a cognizable claim for relief, and it must be 'final' in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" *Curtiss-Wright*, 446 U.S. at 7. The United States Supreme Court in *Curtiss-Wright* explained that "[t]he court of appeals must, of course, scrutinize the district court's evaluation of such factors as the interrelationship of claims so as to prevent piecemeal appeals in cases which should be reviewed only as single units." 446 U.S. at 10.

[14] In other words, the claim adjudicated must be separate from the remaining claims in the case, capable of being disposed of without affecting the claims still pending. We stated in *GHURA*, that "the claim adjudicated must be a 'claim for relief' separable from and independent of the remaining claims in the case." 2004 Guam 22 ¶ 20. If there is a close relationship between the adjudicated claim and the pending claim, the claims should be dealt with together, rather than piecemeal. *See Curtiss-Wright*, 446 U.S. at 10.

[15] Determining finality, then, requires determining whether De Vera's contract claim is separate and independent from the Chens' remaining fraud counterclaim, and thus capable of a final disposition.

[16] Courts have struggled to clarify a single test to determine whether the claims are separate and independent. The Seventh Circuit Court has said:

> Neither the Supreme Court nor this Court . . . has enunciated a general definition of what separate "claims for relief" are in the context of Rule 54(b). The competing policies underlying Rule 54(b) give no clear guidance. On one hand, the liberal provisions of the Federal Rules regarding joinder of claims require some mechanism to accelerate execution of the judgment and repose as to rights decided early in a given litigation; but on the other hand, since claims in a given litigation do not always fall neatly into discrete blocks in terms of the underlying facts potentially relevant to each, piecemeal review may wastefully force appellate courts to

> familiarize themselves with the facts of the litigation more than once . . . courts have been completely unable to settle on a single test for determining when claims are "separate."

Local P-171, Amalgamated Meat Cutter & Butcher Workmen v. Thompson Farms Co., 642 F.2d 1065, 1070 (7th Cir. 1981) (citations omitted).

1. Separate facts

[17] In the past, courts have considered whether or not the claims arose out of different factual occurrences so as to make them distinct, and whether the claims were based on different legal theories. *See* 10 Charles Alan Wright, Arthur R. Miller & May Kay Kane, Federal Practice and Procedure § 2657 (3d ed. 1998). However, such approach was "unsatisfactory and provided little predictability" and moreover, "[i]n many situations, piecemeal appeals were allowed." *Id*.

2. Separate recovery

[18] An alternative and a more appropriate test considers whether each claim could have been enforced separately. *See Local P-171*, 642 F.2d at 1070-1071 ("Rather than attempting to advance a general definition of what constitutes 'separate claims', we conclude that a better approach is to state rules of thumb to identify certain types of claims that clearly cannot be 'separate,' . . . At a minimum, claims cannot be separate unless separate recovery is possible on each."); *Rieser v. Baltimore & Ohio Ry. Co.*, 224 F.2d 198, 199 (2nd Cir. 1955) ("The ultimate determination of multiplicity of claims must rest in every case on whether the underlying factual bases for recovery state a number of different claims which could have been separately enforced."). It has been recognized that the determination of the separateness of the claims "rest in every case on whether the underlying factual bases for recovery could have been separately enforced." 10 Charles Alan Wright, Arthur R. Miller & May Kay Kane, Federal Practice and Procedure § 2657 (3d ed. 1998). Furthermore, reading *Sears, Roebuck & Co., v. Mackey*, 351 U.S. 427 (1956) and *Cold Metal Process Co. v. United Engineering & Foundry Co*., 351 U.S. 445 (1956) together, "these decisions

repudiate the notion that a separate claim for purposes of Rule 54(b) is one that must be entirely distinct from all the other claims in the action and arise from a different occurrence or transaction." 10 Charles Alan Wright, Arthur R. Miller & May Kay Kane, Federal Practice and Procedure § 2657 (3d ed. 1998).

3. Application of the tests

[19] Applying both tests to the instant case reveals that De Vera's claim and the Chens' counterclaim are not separate and independent from each other.

[20] First, under the separate facts test, De Vera's claim (enforcement of the contract price) and the Chens' counterclaim (relief from a fraudulent contract) arise out of the same factual grounds. At issue in both the claim and counterclaim is the contractual transaction involving the sale and acquisition of Lot No. 5156-1.

[21] Second, under the separate recovery test, the parties' claims cannot be separately enforced. Both De Vera's claim and the Chens' counterclaim are dependent on the validity of the contract and whether or not the conditions precedent were fulfilled. If the court should find that the contract was valid and depicted an accurate number of square meters and the conditions precedent were satisfied, the Chens would lose on their counterclaim and thus, be ordered to pay De Vera the remaining balance. However, should the court find that the contract was invalid and less land was actually conveyed than claimed in the contract or the condition precedents were not fulfilled, De Vera would lose on his claim and thus, be ordered to pay the Chens. Under these facts, De Vera's claim and the Chens' counterclaim cannot be separately enforced. The two claims are sufficiently related, and thus, should be adjudicated together, rather than piecemeal. *See Curtiss-Wright*, 446 U.S. at 10. Indeed, having sufficiently related claims is precisely the situation in which granting Rule 54(b) certification is improper.

[22] Significantly, in the Order Granting Certification Pursuant to GRCP 54(b), the trial court itself found that the claim and counterclaim were related. "The Court finds that the respective claims in the complaint and the counterclaim are sufficiently related that there is a possibility of prejudice to both parties as to evidentiary issues and other issues if the claim and counterclaim to be tried separately." Appellant's ER, at 92-93 (Order Granting Certification Pursuant to GRCP 54(b), Dec. 22, 2004). The trial court further states that because of the relatedness of the claims and considerations of judicial economy, De Vera's claim should be certified: if the dismissal is affirmed, his claim will be disposed of, and if the dismissal is reversed, both claim and counterclaim will be tried together. De Vera himself puts forth this argument, stating that the trial court's certification was proper because it facilitated resolution of the litigation. Although the trial court recognized the relatedness of the claim and counterclaim, it inexplicably relied on this as a reason for granting certification. We have stated that a close relationship of claims is a reason for denying – not granting – Rule 54(b) certification.

[23] The trial court further erred in applying Rule 54(b), because it bypassed the first step of finding that the claims are separate, and instead immediately balanced judicial efficiency with the need for an early and separate judgment for one of the claims. However, this balancing test is applied only after the first step has been satisfied. *See Gregorian v. Isvestia*, 871 F.2d 1515, 1519 (9th. Cir. 1989) ("*Curtiss-Wright* requires two enquiries. The first, consisting of the scrutiny of the district court's evaluation of factors such as the interrelationship of the claims . . . [t]he second, an assessment of basically equitable concerns, is made only after the . . . concerns of the first step are satisfied.")(citations omitted). Here, the trial court erred; the court apparently overlooked the first prong, and immediately addressed the second prong in balancing the equities.

[24] We hold that trial court erred in granting Rule 54(b) certification.

B. Second Prong: Balancing Test

[25] The second prong in a Rule 54(b) analysis involves considering whether or not costs and risks of multiple proceedings and the policy with respect to judicial efficiency are outweighed by the need for an early and separate judgment as to De Vera's claim. *See* 10 Charles Alan Wright, Arthur R. Miller & May Kay Kane, Federal Practice and Procedure § 2655 (3d ed. 1998) ("An appellate court need concern itself with the other Rule 54(b) prerequisite . . . only when it is satisfied that the [lower] court properly has reached a final decision as to any of the claims or parties and has directed the entry of judgment on that decision.").

[26] Having found that De Vera's contract claim is neither factually separate nor separately enforceable, it not capable of a final disposition because it is not separate and independent from the Chens' fraud counterclaim. Based on our analysis above, it is unnecessary to analyze the second prong of balancing the equities.

IV.

[27] We hold that the trial court erred in certifying the Superior Court Judgment pursuant to Rule 54(b) of the Guam Rules of Civil Procedure. Furthermore, because the Judgment was erroneously certified, this court lacks jurisdiction to hear De Vera's appeal. Accordingly, we **REVERSE** the certification order and **DISMISS** this appeal for lack of jurisdiction.